IN THE UNITED STATES COURT OF FEDERAL CLAIM

JOSEPH REAVES

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16-141

THE UNITED STATES

COMPLAINT

Plaintiff Joseph Reaves, Pro se, complaint against defendants The United States, United States Army and the Army Board Correction of Military Records ("ABCMR").

JURISDICTION

This Court has specific jurisdiction over this action under 28 U.S.C. § 1491 ("Big Tucker Act") amount of controversy is over \$10,000., 10 U.S.C. § 301-307 et seq (Army Organization statutes), 10 U.S.C. § 1201 et seq (military disability retirement statutes), 10 U.S.C. § 1552 (military correction board enabling statute) and Army rules and regulations relating to medical standards and disability retirement; and under the Administrative Procedure Act, 5 U.S.C. § 701, et seq this Court has jurisdiction to review a determination made by the Army Board Correction of Military Records.

FACTS

1. Soldier Reaves was diagnosed with Duodenal Ulcer via X-rays (SEE: Exhibit C, C-4) The ABCMR admitted that he was admitted for treatment of a duodenal ulcer on 2 May and discharged on 5 May 1983 (SEE: Exhibit A, A-3, Item 4). The 1983 version of Army Regulation 40-501 says, "Ulcer peptic, duodenal or gastric supported by laboratory and X-ray evidence of activity" (SEE: Exhibit E-7) WILL BE REFERRED TO A PHYSICAL EVALUATION

- BOARD. (SEE: Exhibit E, E-4). The Army failed to Refer Soldier Reaves case to a PEB as the regulation dictates.
- 2. Soldier Reaves was a part of the PRP Program, Records showed that he was found suitable for the PRP on 16 April 1982 while he was assigned to the 1st Battalion, 30 Field Artillery Regiment, Germany (SEE: Exhibit D-1, DA Form 3180); (SEE: Exhibit A-3, Item 3) and the PRP status was terminated on 25 January 1985 (SEE: Exhibit D-1); (SEE: Exhibit A-3, Item 8). Mr. Reaves was an Assembler of eight inch nuclear projectiles from 820214 (13B10M5) until 841004 (SEE: Exhibit D-4).
- 3. On 5 May 1983 Dr. Thomason failed to make notification to Reaves commander as the records indicate (SEE: Exhibit C-2, DA Form 2985) and refer him to a PEB as AR 40-501 prescribes. On November 1983 Nathaniel Hill failed to make notification to Reaves commander when he complained about depression and anxiety (SEE: Exhibit F-6, SF 93) On 11 June 1984 Nathaniel Hill failed to make notification to Reaves commander when he complained of cramps in abdomen pinching feeling that runs from buttocks to stomach area (SEE: Exhibit F-8 SF 600) yet on 5 September 1984 Abdomen pain complaint Mr. Hill indicated "will not affect PRP status and commander notified per DD Form 689" (SEE: Exhibit F-9). These Doctors failed to make notification to Reaves commander violating the regulation AR 50-5.
- 4. The ABCMR admitted "while the applicant did have a medical condition that potentially could have led to an MEB" (SEE: Exhibit B-5, Item 6) The 1983 version of AR 40-501 mandates referral to a PEB. (SEE: Exhibit E. E-4).
- 5. The failed notifications deprived the commander from making referrals to an MEB and PEB.

 Mr. Reaves working in a high security position as an assembler was unfit to perform his duties under the PRP program and should have been removed from the PRP status and disqualified due

to unfitness to perform his duties. No assembler of nuclear projectiles with complaints of duodenal ulcer, "Stomach pain for one month, Lots of night pain constantly took bottles & bottles of Mylanta because a "little bit" didn't help. Often had to buckle over while in Formation (SEE: Exhibit C-5 SF 539) and compliant of "When he stands up he has a pinching feeling that runs from buttocks to stomach area' (SEE: Exhibit F-8, SF 600) is fit to perform his duties.

6. These action and failures to act in accordance with Army regulations deprive Mr. Reaves of this due process rights entailed in the Disability statute 10 U.S.C. § 1201 and violated his other constitutional rights. As a result of these actions Mr. Reaves still suffers from this permanent stomach disability ulcer (SEE: Exhibit F-1 Thru F-5, VA Rating Decision) and is being seen by Veterans Affairs for other contributory defects he suffers from dating back to the time he was a soldier in the 1st Battalion 30th Field Artillery Unit in Germany.

CONCLUSION

Wherefore, the plaintiff demand a judgment against the United States in the amount of \$750,000. To equal the amount of disability payments that would have been made dating back to 1983 the time of the infraction. The plaintiff request that this Honorable Court remand this matter back to the ABCMR with instruction to follow the 1983 version of Army Regulation 40-501 and refer Mr. Reaves records to a PEB. Change Honorable discharge to medical discharge and change all records to reflect this medical discharge.

Respectfully submitted,

Joseph Reaves, January 26, 2016

P.O. Box 30769

Phila., PA 19104

2679712760

EXH/B/T



DEPARTMENT OF THE ARMY ARMY REVIEW BOARDS AGENCY 1901 SOUTH RELL STREET

1901 SOUTH BELL STREET ARLINGTON VA 22202-4508

February 26, 2009

Case Management Division/cgw AR20090001889

Mr. Joseph D. Reaves AS1536 PO Box 244 Collegeville, PA 19426-0244

Dear Mr. Reaves:

This is in response to your December 29, 2008 application to the Army Board for Correction of Military Records (ABCMR). My office provides administrative support to the ABCMR.

I note in reviewing your application that you are requesting the ABCMR change your honorable discharge to a disability discharge. The ABCMR has requested your military records from the repository in St. Louis, Missouri; however, they are charged out to another organization at this time.

Unfortunately, without your military records, the ABCMR cannot make a fair, impartial, and equitable determination of your application. There is a presumption that what the Army did in your case was correct. The burden of proving otherwise is your responsibility.

Accordingly, the ABCMR cannot take any further action at this time and your case is administratively closed without action and without prejudice. If you reapply, please allow 90 days before you submit a new DD Form 149 with supporting documents.

I trust this information is helpful.

Sincerely,

Walter Avery

Chief, Case Management Division

Enclosure

A-1



DEPARTMENT OF THE ARMY

BOARD FOR CORRECTION OF MILITARY RECORDS 1901 SOUTH BELL STREET 2ND FLOOR ARLINGTON, VA 22202-4508

SFMR-RBR

17 February 2010

MEMORANDUM FOR US ARMY REVIEW BOARDS AGENCY SUPPORT DIVISION, ST. LOUIS (SFMR-RBR-SL), 9700 PAGE AVENUE, ST. LOUIS, MO 63132-5200

SUBJECT: Army Board for Correction of Military Records Record of Proceedings for Reaves, Joseph D., SSN 164583092, AR20090009517

The application submitted by the individual concerned has been denied by the Army Board for Correction of Military Records.

Encl

Director, Army Board for Correction of Military Records

CF:

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ARMY BOARD FOR CORRECTION OF MILITARY RECORDS RECORD OF PROCEEDINGS

IN THE CASE OF: REAVES, JOSEPH D.

BOARD DATE: 4 February 2010

DOCKET NUMBER: AR20090009517

THE BOARD CONSIDERED THE FOLLOWING EVIDENCE:

- 1. Application for correction of military records (with supporting documents provided, if any).
- 2. Military Personnel Records and advisory opinions (if any).

THE APPLICANT'S REQUEST, STATEMENT, AND EVIDENCE:

- 1. The applicant requests that his honorable discharge be changed to a disability discharge.
- 2. The applicant states, in effect, that both periods of his service, which total 5 years, should be changed to show that he was unfit and that his discharge be changed to show a disability discharge. He also states that the Army failed to follow Army regulations which required the doctors to notify his unit commander, fill out a DD Form 3349 (Physical Profile), and refer him to a medical evaluation board (MEBD). The applicant continues to state that he was a member of the Personnel Reliability Program (PRP) and, in accordance with Army Regulation 50-5 (Nuclear Surety) and Army Regulation 40-501 (Standards of Medical Fitness), the doctors failed to take his complaints of a duodenal ulcer and emotional and mental disturbances seriously. The applicant also states that he was hospitalized during both of his tours for these illnesses.
- 3. The applicant provides an extensive self-authored statement and copies of the following documents in support of this application: a DA Form 3180 (Personnel and Evaluation Record), a DA Form 2985 (Admission and Information), a Standard Form 93 (Report of Medical History), three Standard Forms 600 (Chronological Record of Medical Care), a DA Form 5181-R (Screening Note of Acute Medical Care), two DA Forms 4700 (Medical Record Supplemental Medical Data), a Standard Form 509 (Clinical Record), a Standard Form 513 (Consultation Sheet), and a DA Form 3647 (Inpatient Treatment Record Cover Sheet).

AR20090009517

CONSIDERATION OF EVIDENCE:

- 1. Title 10, U.S. Code, section 1552(b), provides that applications for correction of military records must be filed within 3 years after discovery of the alleged error or injustice. This provision of law also allows the Army Board for Correction of Military Records (ABCMR) to excuse an applicant's failure to timely file within the 3-year statute of limitations if the ABCMR determines it would be in the interest of justice to do so. While it appears the applicant did not file within the time frame provided in the statute of limitations, the ABCMR has elected to conduct a substantive review of this case and, only to the extent relief, if any, is granted, has determined it is in the interest of justice to excuse the applicant's failure to timely file. In all other respects, there are insufficient bases to waive the statute of limitations for timely filing.
- 2. The applicant enlisted in the Regular Army on 6 October 1981.
- 3. The applicant submitted a copy of a DA Form 3180 which shows that he was found suitable for the PRP on 16 April 1982 while he was assigned to the 1st Battalion, 30th Field Artillery Regiment, Germany.
- 4. The applicant submitted a copy of a DA Form 2985 which shows that he was admitted to the U.S. Army Hospital, Augsburg, Germany, on 2 May 1983 for treatment of a duodenal ulcer and discharged on 5 May 1983.
- 5. The applicant submitted a copy of a Standard Form 93, dated 8 November 1983, in which he stated in item 8 (Statement of Examinees Present Health and Medications Currently Used), "I am in very good heath and at this time I'm not on any medication."
- 6. The applicant submitted a copy of a Standard Form 600, dated 3 November 1983 to 9 November 1983, which shows that he denied the use of any drugs other than the occasional use of alcohol during his PRP interview. It was noted that the applicant's medical records were missing and the cover was found torn and destroyed in downtown Augsburg, Germany.
- 7. The applicant submitted copies of two Standard Forms 600, dated 11 June 1984 and September 1984, which show that he was treated for abdominal pain and that the treatment would not interfere with his PRP status.
- 8. The applicant's DA Form 3180 shows that his PRP status was administratively terminated on 25 January 1985 when he was assigned to the 49th Ordnance Detachment, Fort Riley, KS.



AR20090009517

- 9. The applicant submitted a copy of a DA Form 5181-R, dated 6 February 1986, which shows that he was treated for severe abdominal pain on that date.
- 10. On 5 June 1986, the applicant accepted nonjudicial punishment for wrongful use of some amount of marijuana between 23 March 1986 and 23 April 1986. His imposed punishment was a reduction to private first class/E-3, forfeiture of \$200.00 pay per month for 2 months, and 45 days of extra duty.
- 11. The applicant submitted copies of two DA Forms 4700, a Standard Form 509, a Standard Form 513, and a DA Form 3647, dated 4 August 1986, which show he was admitted and discharged from Irwin Army Community Hospital, Fort Riley, KS, on the same date after receiving an endoscopy, being prescribed Tagamet, observation, and being diagnosed with a pre-pyloric peptic ulcer.
- 12. The applicant submitted an undated Report of Mental Status Evaluation which states he had the mental capacity to understand and participate in the discharge proceedings, was mentally responsible, and met the retention requirements of chapter 3, Army Regulation 40-501.
- 13. The applicant submitted several pages of what appear to be his analyses of his medical treatment by various individuals.
- 14. The specific facts and circumstances surrounding the applicant's discharge processing are not available for review. However, the evidence of record does include a properly-constituted DD Form 214 authenticated by the applicant that contains the authority and reason for the applicant's active duty discharge on 10 November 1986 in pay grade E-1. The DD Form 214 shows he was discharged under the provisions of Army Regulation 635-200 (Personnel Separations), chapter 10, for the good of the service in lieu of trial by court-martial with an under other than honorable conditions discharge. The DD Form 214 he was issued confirms he completed a total of 5 years, 1 month, and 5 days of creditable active military service and had reenlisted on 20 September 1984 without a break in service.
- 15. There is no indication that the applicant applied to the Army Discharge Review Board for an upgrade of his discharge within its 15-year statute of limitations.
- 16. Army Regulation 635-40 (Physical Evaluation for Retention, Retirement, or Separation) provides the standards for medical fitness for retention and separation, including retirement, and states, in pertinent part, that the medical treatment facility commander with the primary care responsibility will evaluate

A4

AR20090009517

those referred to him and will, if it appears as though the member is not medically qualified to perform duty or fails to meet retention criteria, refer the member to an MEBD. Those members who do not meet medical retention standards will be referred to a physical evaluation board (PEB) for a determination of whether they are able to perform the duties of their grade and military specialty with the medically-disqualifying condition.

- 17. Army Regulation 635-40 provides, in pertinent part, that the medical treatment facility commander with the primary care responsibility will evaluate those referred to him and will, if it appears as though the member is not medically qualified to perform duty or fails to meet retention criteria, refer the member to an MEBD. Those members who do not meet medical retention standards will be referred to a PEB for a determination of whether they are able to perform the duties of their grade and military specialty with the medically disqualifying condition.
- 18. Army Regulation 40-501 does not list a peptic ulcer as a cause for referral to an MEBD.
- 19. Army Regulation 635-200 sets forth the basic authority for the separation of enlisted personnel. Chapter 10 of this regulation provides, in pertinent part, that a member who has committed an offense or offenses for which the authorized punishment includes a punitive discharge may submit a request for discharge for the good of the service in lieu of trial by court-martial. The request may be submitted at any time after charges have been preferred and must include the individual's admission of guilt. Although an honorable or general discharge is authorized, a discharge under other than honorable conditions is normally considered appropriate.

DISCUSSION AND CONCLUSIONS:

- 1. The evidence of record shows that the applicant was treated for severe abdominal pain and diagnosed with a pre-pyloric peptic ulcer. The evidence of record also shows the applicant accepted nonjudicial punishment for wrongful use of some amount of marijuana between 23 March 1986 and 23 April 1986.
- 2. Army Regulation 40-501 does not list a peptic ulcer as a cause for referral to an MEBD. There is no evidence to show he was diagnosed with a duodenal ulcer while on active duty.

AR20090009517

- 3. There is no evidence in the applicant's record nor did the applicant submit any evidence that shows he was being considered for a medical discharge from the military. On the contrary, the evidence of record shows that after exhaustive medical tests, examinations, and treatment he was cleared for continued service.
- 4. There is no evidence to show that the applicant's medical records should have been reviewed by an MEBD. Without an MEBD, there would have been no basis for referring him to a PEB. Without a PEB, the applicant could not have been issued a medical discharge or retired for physical unfitness.
- 5. Although the applicant's record is void of the specific facts and circumstances surrounding his discharge processing, it does contain a properly-constituted DD Form 214 which shows that the applicant was separated for the good of the service in lieu of trial by court-martial and that his service was characterized as under conditions other than honorable.
- 6. There is no evidence which shows the applicant was not properly and equitably discharged in accordance with the regulations in effect at the time, that all requirements of law and regulations were not met, or that the rights of the applicant were not fully protected throughout the separation process. Absent such evidence, regularity must be presumed in this case.
- 7. In view of the above, there is no basis for granting the applicant's requested relief.

BOARD VOTE:	(9)
	GRANT FULL RELIEF
	GRANT PARTIAL RELIEF
	GRANT FORMAL HEARING
Shall Stop	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

The evidence presented does not demonstrate the existence of a probable error or injustice. Therefore, the Board determined that the overall merits of this case

A6

AR20090009517

are insufficient as a basis for correction of the records of the individual concerned.

CHAIRPERSON

I certify that herein is recorded the true and complete record of the proceedings of the Army Board for Correction of Military Records in this case.

M-7

Security series



DEPARTMENT OF THE ARMY

BOARD FOR CORRECTION OF MILITARY RECORDS 1901 SOUTH BELL STREET 2ND FLOOR ARLINGTON, VA 22202-4508

February 17, 2010

AR20090009517, Reaves, Joseph D.

Mr. Joseph D. Reaves PO Box 244 Collegeville PA 19426

Dear Mr. Reaves:

I regret to inform you that the Army Board for Correction of Military Records denied your application.

The Board considered your application under procedures established by the Secretary of the Army. I have enclosed a copy of the Board's Record of Proceedings. This decision explains the Board's reasons for denying your application.

This decision in your case is final. You may request reconsideration of this decision within one year by letter to the above address only if you can present new evidence or argument that was not considered by the Board when it denied your original application.

A copy of the Board's decision and proceedings has been furnished to the counsel you listed on your application, the Disabled American Veterans, 807 Maine Avenue, Southwest, Washington, DC 20024-2410.

Sincerely,

Director, Army Board for Correction

of Military Records

Enclosure



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ARMY BOARD FOR CORRECTION OF MILITARY RECORDS RECORD OF PROCEEDINGS

IN THE CASE OF: REAVES, JOSEPH D.

BOARD DATE: 2 June 2011

DOCKET NUMBER: AR20100028381

THE BOARD CONSIDERED THE FOLLOWING EVIDENCE:

- 1. Application for correction of military records (with supporting documents provided, if any).
- 2. Military Personnel Records and advisory opinions (if any).

THE APPLICANT'S REQUEST, STATEMENT, AND EVIDENCE:

- 1. The applicant requests reconsideration of his previous request for a physical disability discharge or retirement to include entitlement to incapacitation pay.
- 2. The applicant states his medical condition was not properly evaluated and reported to higher authorities as required for personnel in his security position. He had medical problems that should have required referral to a Medical Evaluation Board (MEB). He believes his medical condition should have prevented him from reenlisting and warranted a physical disability separation or retirement. He claims that his due process was violated and he was denied a proper consideration for medical separation processing. He also contends that he is entitled to incapacitation pay.
- 3. The applicant provides over 45 pages of self-authored statements and arguments. He also provides:
- a. three packets of service medical records, two for his first enlistment totaling 43 pages and a 37 page packet for his second enlistment;
- b. a packet of post-service medical records including records from the Pennsylvania Department of Corrections, private physicians, and the Department of Veterans Affairs (VA);
- c. an 8 March 2009 medical examination with 62 pages of VA treatment records;

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- d. a 1984 article titled "Frequency of Illness Associated with Epidemic Hepatitis A Virus Infections In Adults";
 - e. his DA Form 2-1 (Personnel Qualification Record-Part II);
- f. a DA Form 2627 (Record of Proceedings Under Article 15, Uniform Code of Military Justice);
 - g. his DD Form 214 (Certificate of Release or Discharge from Active Duty),
 - h three court of appeals decisional documents; and
 - i. portions of Army Regulation 40-501 (Standards of Medical Fitness).

CONSIDERATION OF EVIDENCE:

- 1. Incorporated herein by reference are military records which were summarized in the previous consideration of the applicant's case by the Army Board for Correction of Military Records (ABCMR) in Docket Number AR20090009517, on 4 February 2010.
- 2. A significant portion of the medical documents the applicant provided were available to the previous Board when his request for a disability discharge was reviewed; however, the court cases, his request for retirement, and incapacitation pay are considered new evidence and new issues that require reconsideration.
- 3. Incapacitation pay is afforded to Army National Guard and Army Reservists who are injured while performing military duties and as a result of the injury were unable to perform their regular civilian jobs. Since the applicant was Regular Army not a Reservist he is not entitled to incapacitation pay, thereby making this issue moot. It will not be further addressed in this Record of Proceedings.
- 4. The applicant served on active duty in the Regular Army from 6 October 1981 through 10 November 1986. He was discharged under Army Regulation 635-200, chapter 10, for the good of the service in lieu of trial by court-martial.
- 5. The applicant's prior request for a disability discharge was denied because the available medical evidence did not show he was medically unfit or warranted referral to an MEB.
- 6. The available service records show that between May 1983 and the date of the applicant's discharge he was treated for a duodenal ulcer, sore throat, right knee injury, a puncture wound to his chest, a fungal infection, an abscess on his

AR20100028381

buttock, abdominal cramps, a bump on his eyelid, back pain, and a rash on his face. His records show that on several occasions his medical conditions were evaluated in accordance with regulations in effect for personnel serving in a security sensitive position and determined not to have a negative impact on his position.

- 7. The circumstances surrounding the three court cases differ significantly from the applicant's situation. In all three cases those individuals had well-documented medical histories and records, they were processed by MEBs, and there was no evidence of disciplinary action or misconduct.
- 8. At the time of the applicant's separation processing he would have been advised of the effects of a discharge under the provisions of chapter 10, Army Regulation 635-200, and that he might be deprived of many or all Army and VA benefits.
- 9. The applicant's VA medical recodes show he is being treated for a peptic ulcer, chronic gastritis, and post-traumatic stress disorder. All of the VA medical records are dated over the period of the last 20 years after he was discharged. They show his current medical condition, they do not document or relate to his medical condition at the time of his discharge in 1986.
- 10. The additional medical records the applicant provided show has suffered from and he has been treated for abdominal pain and ulcers since his release from active duty on a periodic basis.
- 11. Army Regulation 635-200 (Active Duty Enlisted Administrative Separations) provides the following:
- a. Soldiers who committed an offense or offenses for which the authorized punishment included a punitive discharge could submit a request for discharge for the good of the service at any time after court-martial charges were preferred.
- b. Soldiers who committed an offense or offenses, the punishment for which under the UCMJ includes a bad conduct or dishonorable discharge, may submit a request for discharge in lieu of trial by court-martial.
- c. A medical examination is not required for Soldiers being separated under chapter 10, but may be requested by the Soldier under Army Regulation 40-501.
- d. Paragraph 1-33 (Disposition through medical channels) states <u>except</u> (emphasis added) in separation actions under chapter 10 disposition through medical channels takes precedence over administrative separation processing.

AR20100028381

- 12. Title 10, U.S. Code, chapter 61, provides disability retirement or separation for a member who is physically unfit to perform the duties of his office, rank, grade or rating when the disability was incurred while entitled to basic pay.
- 13. Army Regulation 40-501 (Standards of Medical Fitness) provides in:
- a. paragraph 3-3a that performance of duty despite an impairment would be considered presumptive evidence of physical fitness; and
- b. paragraph 3-3b(1) for an individual to be found unfit by reason of physical disability they must be unable to perform the duties of their office, grade, rank or rating.
- 14. Army Regulation 635-40 (Physical Evaluation for Retention, Retirement, or Separation), provides in:
- a. paragraph 3-1 the mere presence of an impairment does not, of itself, justify a finding of unfitness because of physical disability. In each case, it is necessary to compare the nature and degree of physical disability present with the requirements of the duties the member reasonably may be expected to perform because of his or her office, rank, grade or rating;
- b. paragraph 3-2b(1) disability compensation is not an entitlement acquired by reason of service-incurred illness or injury; rather, it is provided to Soldiers whose service is interrupted and they can no longer continue to reasonably perform because of a physical disability was incurred or aggravated in service; and
- c. paragraph 3-2b(2) when a member is being separated by reason other than physical disability his continued performance of duty creates a presumption of fitness which can be overcome only by clear and convincing evidence that he was unable to perform his duties or that an acute grave illness or injury or other deterioration of physical condition occurred immediately prior to or coincident with separation rendered the member unfit.
- 15. Army Regulation 15–185 (ABCMR) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. Paragraph 2-9 states that the ABCMR begins its consideration of each case with the presumption of administrative regularity. The applicant has the burden of proving an error or injustice by a preponderance of the evidence.

AR20100028381

DISCUSSION AND CONCLUSIONS:

- 1. The applicant states he had medical problems that were not properly evaluated, and he should have been referred to an MEB. His medical conditions should have prevented him from reenlisting and warranted a physical disability separation or retirement. He claims that his due process was violated and he was denied proper consideration for medical separation processing. His medical condition was not properly reported to higher authorities as required for personnel in his security position.
- 2. In the court cases the applicant provided none of the individuals were facing disciplinary action for misconduct as the applicant was. Therefore, these cases have no direct bearing on the applicant's case and will not be further addressed.
- 3. The applicant has not provided any evidence and the available records do not contain any evidence that shows his due process was violated as it relates to the handling of his medical conditions while on active duty. Additionally, the available evidence does not show he had medical conditions that were of such a nature that they should have prevented him from qualifying for reenlistment.
- 4. The applicant has not provided and the record does not show that he was physically unfit to perform the duties of his office, rank, grade or rating, that his service was irrupted due to a medical condition, or that he was denied due process in the reporting of his medical conditions while he was in an active duty status.
- 5. The mere presence of an impairment does not of itself, justify a finding of unfitness because of physical disability. Therefore, the applicant has not shown he was entitled to a physical disability separation or retirement.
- 6. While the applicant did have a medical condition that potentially could have led to an MEB, his discharge was not the result of his inability to serve due to this medical condition. The applicant elected to be discharged in lieu of facing a trial by court-martial due to his own willful misconduct. Discharges under chapter 10, Army Regulation 635-200 take precedence over medical separation processing and the applicant has not shown that his physical conditions were the cause of his misconduct.
- 7. The regulations governing the Board's operation require that the discharge process be presumed to have been in accordance with applicable law and regulations unless the applicant can provide evidence to overcome that presumption. The applicant has failed to provide convincing evidence to overcome this presumption.

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BOARD VO	DTE:		
			GRANT FULL RELIEF
			GRANT PARTIAL RELIEF
			GRANT FORMAL HEARING
MYP	mp	ara	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

- 1. In regard to his request for a disability discharge, the evidence presented does not demonstrate the existence of a probable error or injustice. Therefore, the Board determined that the overall merits of this case are insufficient as a basis to amend the decision of the ABCMR set forth in Docket Number Docket Number AR20090009517, on 4 February 2010.
- 2. The available evidence is also insufficient to correct his record to show that he was discharged due to retirement.

CHAIRPERSON

I certify that herein is recorded the true and complete record of the proceedings of the Army Board for Correction of Military Records in this case.

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National Personnel Records Center

Military Personnel Records, 9700 Page Avenue St. Louis, Missouri 63132-5100

June 25, 2007

JOSEPH REAVES AS1536 P.O. BOX 244 GRATERFORD, PA 19426

RE:

Veteran's Name: REAVES JOSEPH

SSN/SN: 164583092

Request Number: 1-3076692314

Dear Sir or Madam:

Thank you for contacting the National Personnel Records Center. The original medical record needed to answer your inquiry is not currently in our files. The medical record has been loaned to the Department of Veterans Affairs (VA). We suggest that you contact the nearest VA Regional Office to obtain copies of the records. If a claim has been filed with the VA it would be helpful to include the VA claim number when contacting them. You may call 1-800-827-1000 to locate the VA office nearest you.

Enclosed please find the requested Clinical Records. However, we regret that some documents are not completely legible, but are the best available copies we can provide.

If you have questions or comments regarding this response, you may contact us at 314-801-0548 or by mail at the address shown in the letterhead above. If you contact us, please reference the Request Number listed above. If you are a veteran, or a deceased veteran's next of kin, please consider submitting your future requests online by visiting us at http://vetrecs.archives.gov.

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EFFREY SPEARS

Archives Technician (1C)

Enclosure(s)

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MEDICAL RECORD

ABBREVIATED MEDICAL RECORD

PERTINENT HISTORY, CHIEF COMPLAINT, AND CONDITION ON ADMISSION (Enler dute of admission) Admit 2 May 83 20 40. has had upper abdominal pain since one month ago. He provines he of the pan the pan initially was in region of xightered process and R rib cago had were plainte in nature, Lots of night pain "constinity". Took bottless & bottless of Mylanke because a little bit didn't holp, Often had to buckle over while in formation, No change the bould time. This I Am Hong delayed whitely Shared active ulcor. Ho by of serious 11/1005.

Con-yound Nogu of i no acuto distress Eyes-harled terthosity of fundal vsls with some copper wiring Noch - thyurd pagnoles, Chastlung's Heart PMI 3th ICS LEL PROR , no in trouding I handtost may strul postono PROGRESS (Enter date of discharge and final diagnosis) 4000

of May 83 No abdominal para succe admission. No abdomina ter deness. 61. placed on intersure anticles vegine for 24 hrs. Will start sold foods today and plin on descharge Commen

SIGNATURE OF PHYSICIAN Danie & Mong ST IDENTIFIC	CATION NO.	ORGANIZATION
PATIENT SIDENTIFICATION Formy ped on written softries give Name last, hist, middle; grade date; hospital or medical facility)	REGISTER NO.	WARD NO.

REAVES JOSEPH O SP4

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ABBREVIATED MEDICAL RECORD

Standard Form 599

GENERAL SERVICES ADMINISTRATION AND INTERAGENCY COMMITTEE ON MEDICAL RECORDS FPMR 101-11.305-8 OCTOBER In

· Wedi	CAL RECORP	PROGRESS NOTES
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Standard Form 600
General Services Administration and
Interagency Computes the Hedical Respire 41-ZNS Document 1 Filed 01/29/16 Page 28 of 68

October 1975 1 Aug 79

HEALTH RECORD	CHRONOLOGICAL RECORD OF MEDICAL CARE
DATE	SYMPTOMS, DIAGNOSIS, TREATMENT, TREATING ORGANIZATION (Sign each entry)
7/. **	DISCHARGE NOTE
USAH AUGSBURG, APO	0 09178
DATE OF ADMISSION:	2140782
DATE OF DISCHARGE:	544-150
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PATIENT'S IDENTIFICATION (Us	e this Space for Mechanical PATIENT'S NAME (Last, First, Middle initial) , SEX
Imprint)	
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REAVES JOSEPH O	GP4 SPONSOR'S NAME RANK/GRADE
A BTRY 1\30TH FA	AAA SSAN OR IDENTIFICATION NO. ORGANIZATION
77	CHRONOLOGICAL RECORD OF MEDICAL CARE Standard Form 400 50 9 600-106-01

ADDITIONAL ASSESSMENT DATA

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PATIENT IDENTIFICATION: DATE DATE

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STORY INSTITUTE AAA

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PATIENT DISCHARGE INSTRUMENT	OTSG APPROVED (Date)
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IF PROBLEMS ARISE CALL: 4357 DR'	S NAME: Thomasen
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PATIENT DISCHARGED TO: DUTY HOME OTHER (SPECI	FY)
PATIENT VERBALIZES UNDERSTANDING OF DISEASE PROCESS: YES	* NO
PATIENT VERBALIZES VERBALIZES UNDERSTANDING OF DISCHARGE	INSTRUCTIONS: YES NO
MODE OF DISCHARGE: AMBULATORYW/C	LITTER **
OTHER (SPECIFY):	
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PREPARED BY (Signature & Title) DEPARTMENT/SERVICE/	CLINIC CONTINUE ON FEVERE
PAUENTO IDENTIFICATION (For typed or written entries give: Name - last, first, middle: grade: adte: Hospital of Fortigation facility)	5 May 83
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EDITION OF 1 DEC 77 WILL BE USED UNTIL EXHAUSTED.

Keaves

Dr. Thomason

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EXHIBIT

Case 1:16-cv-00141-ZNS Document 1 Filed 01/29/16 Page 46 of 68



DEPARTMENT OF THE ARMY OFFICE OF THE SURGEON GENERAL 5109 LEESBURG PIKE FALLS CHURCH, VA 22041-3258

REPLY TO ATTENTION OF

AUG 1 7 2010

Health Policy and Services

Mr. Joseph Reaves AS1536 Box 244 Graterford, PA 19426-0244

Dear Mr. Reaves:

I enclosed the copies of Changes 32-34 to AR 40-501 that apply to the time period that you requested.

I hope this information will assist you in your application to the Army Board for the Correction of Military Records. Should you have additional questions or concerns, please do not hesitate to contact me at the above address.

Sincerely,

Rea M. Nuppenau

Medical Standards Staff Officer

E-1



DEPARTMENT OF THE ARMY OFFICE OF THE SURGEON GENERAL 5109 LEESBURG PIKE FALLS CHURCH, VA 22041-3258

REPLY TO ATTENTION OF

Health Policy and Services

29 December 2010

Mr. Joseph Reaves AS1536 Box 244 Graterford, PA 19426-0244

Dear Mr. Reaves:

Enclosed are copies of the requested sections from AR 40-501, Standards of Medical Fitness that were applicable in the requested time frames. PTSD was not specifically identified in AR 40-501 in the requested time period of 1982-1983. The pages dated 1980 were applicable until 1983. There was no change to the 1983 retention standard for peptic ulcer for 1986. I included the first part of Chapter 3 for each of the time frames that may provide additional information. I think the most important piece of information that you must provide is your medical condition prevented you from doing your military duties.

AR 40-501 does not address ratings for any medical conditions, so I would not have the other information that you have requested.

I hope this additional information will assist you in your application to the Army Board for the Correction of Military Records. Should you have additional questions or concerns, please do not hesitate to contact me at 703-681-3157 or email rea.nuppenau@amedd.army.mil.

Sincerely,

Rea M. Nuppenau

Medical Standards Staff Officer

E-2

AR 40-501 *C 34

CHANGE No. 34

HEADQUARTERS DEPARTMENT OF THE ARMY WASHINGTON, DC, 1 December 1983

MEDICAL SERVICES

STANDARDS OF MEDICAL FITNESS

Effective 1 January 1984

This change incorporates policy changes, changes in standards of medical fitness and other administrative and professional refinements. It consolidates information previously published as interim changes.

Interim changes are not official unless they are authenticated by The Adjutant General. Users will destroy interim changes on their expiration dates unless sooner superseded or rescinded.

This publication does not contain information that affects the New Manning System.

AR 40-501, 5 December 1960, is changed as follows:

1. New or changed material is indicated by a star.

2. Remove old pages and insert new pages as indicated below:

Remove	Insert
Cover 1 and title page (cover 2)	
i through iv	Cover 1 and title page (cover 2)
2_1 through 2 10	i through iv
2-1 through 2-19	2-1 through 2-19
3-3 (C 32 page) through 3-4.1	3-4.1 and 3-4.2
3–9 through 3–10.1	3-9 through 3-10.1
3-13 through 3-16	3-13 through 3-16
4-1 through 4-11	4-1 through 4-20
5-1 through 5-6	5-1 through 5-5
6-1 through 6-4	6-1 through 6-4
6–7 and 6–8	6-7 and 6-8
6-11 through 6-14	6-11 through 6-14
7-1 through 7-10	
8-1 through 8-5	8-1 through 8-5
9-1 through 9-11	9-1 through 9-12
10-1 through 10-18	
A2-1	
A3-1 through A3-4	A3-1 and A3-2
A5-1	
A8-1 and A8-2	
A9-1 through A9-8	
Index-1 through Index-27	
	Index–1 through Index–31

3. File this change sheet in the front of the publication for reference purposes.

E-3

D18

^{*}This change supersedes Interim Change 106, 8 March 1983.

CHAPTER 3

*MEDICAL FITNESS STANDARDS FOR RETENTION AND SEPARATION INCLUDING RETIREMENT

(Short Title: RETENTION MEDICAL FITNESS STANDARDS)

Section I. GENERAL

3-1. Scope

This chapter sets forth the various medical conditions and physical defects which may render a member unfit for further military service.

3-2. Applicability

a. These standards apply to the following individuals:

*(1) All officers and warrant officers of the Active Army, Army National Guard and Army Reserve. (See AR 135-175, AR 635-40, AR 635-100, NGR 635-100, and other appropriate regulations for administrative procedures for separation for medically unfitting conditions that existed prior to service.)

★(2) All enlisted members of the Regular Army, Army National Guard and Army Reserve. For those members who were found to have an EPTS medical condition/physical defect that should have precluded original enlistment (chapter 2) but not listed in this chapter, see paragraph 2-2 of this regulation, AR 635-200, or AR 135-178.

(3) Cadets of the United States Military Academy and the Army ROTC and Uniformed Services University of Health Sciences programs for whom the standards of this chapter have been made applicable pursuant to the provisions of paragraph 2–2e.

(4) Members who were placed on the Temporary Disability Retired List (see AR 635-40).

b. These standards do not apply in the following instances:

(1) Retention of officers, warrant officers, and enlisted personnel of the Active Army, Army National Guard, and Army Reserve in Army aviation, airborne, marine diving, ranger, or special forces training and duty, or other duties for which special medical fitness standards are prescribed.

(2) All officers, warrant officers, and enlisted personnel of the Active Army, Army Na-

E-4

tional Guard, and Army Reserve who have been permanently retired.

3-3. Policies

a. Members with conditions listed in this chapter will be evaluated by a medical board and WILL BE REFERRED TO A PHYSICAL EVALUATION BOARD (except for members of the Reserve Components not on active duty). However, this chapter provides general guidelines and is not to be taken as a mandate to the effect that possession of one or more of the listed conditions means automatic retirement or separation from the service. Each case will be decided upon the relevant facts and a determination of fitness or unfitness will be made by the physical evaluation boards dependent upon the abilities of the member to perform the duties of his or her office, grade, rank or rating in such a manner as to reasonably fulfill the purpose of his or her employment in the military service. When a member is being processed for separation for reasons other than physical disability, his or her continued performance of duty until he or she is scheduled for separation for other purposes creates a presumption that the member is fit for duty. In cases where the medical board determines that the member's condition is such that referral to a physical evaluation board is not appropriate, the member may request, in writing, an additional review by the MTF commander of the medical board findings and recommendations. The MTF commander will provide the member with a written report of his or her review, a copy of which will be attached to the medical board proceedings. Cases that are not resolved in this manner will be forwarded to the Commander, United States Army Health Services Command, Fort Sam Houston, TX 78234 (for all medical treatment facilities in the 50 States, the Commonwealth of Puerto Rico, and medical treatment facilities in Panama), Chief



C 33, AR 40-501 1 September 1985

Surgeon, United States Army, Europe, and Seventh Army, APO New York 09102 (for all medical treatment facilities in Europe) or the Surgeon, Eighth United States Army, Korea, APO San Francisco 96301 (for all medical treatment facilities in Korea and Japan).

- b. The various medical conditions and physical defects which may render a member unfit to perform the duties of his or her office, grade, rank or rating by reason of physical disability are not all listed in this chapter. Further, an individual may be unfit because of physical disability resulting from the overall effect of two or more impairments even though no one of them, alone, would cause unfitness. A single impairment or the combined effect of two or more impairments may make an individual unfit because of physical disability if—
- ★(1) The individual is unable to perform the duties of his or her office, grade, rank, or rating in such a manner as to reasonably fulfill the purpose of his or her employment in the military service, worldwide under field conditions, or
- (2) The individual's health or well-being would be compromised if he or she were to remain in the military service, or
- (3) In view of the member's physical condition, his or her retention in the military service would prejudice the best interests of the Government (e.g., a carrier of communicable disease who poses a threat to others).
- c. A member will not be referred to a physical evaluation board because of impairments which were known to exist at the time of his or her acceptance for military service, and which have remained essentially the same in degree of severity since acceptance and have not interfered with his or her performance of effective military service.
- d. A member who has been continued in the military service under one of the programs for continuance of disabled personnel (chap 6, AR 635-40, AR 140-120 and NGR 40-501) will be referred to a physical evaluation board prior to separation or retirement processing.
- e Lack of motivation for service should not influence the medical examiner in evaluating disabilities under these standards except as it may be symptomatic of some disease process. Poorly motivated members who are medically fit for

duty will be recommended for administrative dispostion.

f. An individual who is accepted for and enters the military service is presumed to be in sound physical condition except for those conditions and abnormalities recorded in his or her procurement medical records. However, this presumption may be overcome by conclusive evidence that an impairment was incurred while the individual was not entitled to receive basic pay. Likewise, the presumption that an increase in severity of such an impairment is the result of service must be overcome by conclusive evidence. Statements of accepted medical principles used to overcome these presumptions must clearly state why the impairment could not reasonably have had its inception while the member was entitled to receive basic pay, or that an increase in severity represents normal m/2 8574 M progression.

g. An impairment, its severity, and effect on an individual may be assessed upon carefully evaluated subjective findings as well as upon objective evidence. Reliance upon this determination will rest basically upon medical principles and medical judgment; contradiction of those factors must be supported by conclusive evidence. Every effort will be made to accurately record the physical condition of all members throughout their Army career. It is important, therefore, that all medical conditions and physical defects which are present be recorded, no matter how minor they may appear.

3-4. Disposition of Members Who May be Unfit Because of Physical Disability

★a. Members who have one or more of the conditions listed in this chapter will be referred to a physical evaluation board as prescribed in AR 40-3 and AR 635-40. When mobilization fitness standards (chap 6) are in effect, or as directed by the Secretary of the Army, individuals who may be unfit under these standards but fit under the mobilization standards will not be referred to a physical evaluation board until termination of the mobilization or as directed by the Secretary of the Army. During mobilization, those who may be unfit under both retention and mobilization standards will be processed to determine their eligibility for physical disability

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benefits unless disability separation or retirement is deferred as indicated below.

b. Members on extended active duty who are being referred to a physical evaluation board under the provisions of this chapter will be advised that they may apply for continuance on active duty as provided in chapter 6, AR 635-40.

★c. Members not on extended active duty who do not meet retention medical fitness standards (mobilization medical fitness standards when these

6-6

1 December 1983 C 34, AR 40-501

are in effect) will be processed as prescribed in AR 140-120 for members of the Army Reserve, or NGR 635-200, NGR 40-501, or NGR 40-3 for members of the Army National Guard of the United States, for disability separation or continuance in their Reserve status as prescribed in the cited regulations. Members of the Army National Guard and Army Reserve who may be unfit because of a disability resulting from injury incurred during a period of active duty training of 30 days or less, or active duty for training for 45 days ordered because of unsatisfactory performance of training duty, or inactive duty training will be processed as prescribed in AR 40-3 and AR 635-40.

d. Members on extended active duty who meet retention medical fitness standards, but may be administratively unfit or unsuitable will be reported to the appropriate commander for processing as provided in other regulations, such as AR 635-200.

e. Members on active duty who meet retention medical fitness standards, but who failed to meet procurement medical fitness standards on initial entry into the service (erroneous appointment, enlistment, or induction), may be processed for separation as provided in AR 635-120, AR 635-200, or AR 135-178 if otherwise qualified.

FOR ACTIVE ARMY MEMBERS, THE FOLLOWING SECTIONS II THROUGH XX SET FORTH, BY BROAD GENERAL CATEGORY, THOSE MEDICAL CONDITIONS AND PHYSICAL DEFECTS WHICH REQUIRE MEDICAL BOARD ACTION AND REFERRAL TO A PHYSICAL EVALUATION BOARD. (USAR AND ARNG MEMBERS NOT ON ACTIVE DUTY WILL BE PROCESSED IN ACCORDANCE WITH AR 135-175, AR 135-178, AR 140-10 and NGR 600-200, AS APPROPRIATE.)

Section II. ABDOMEN AND GASTROINTESTINAL SYSTEM

3-5. Abdominal and Gastrointestinal Defects and Diseases

- a. Achalasia (Cardiospasm). Dysphagia not controlled by dilatation, with continuous discomfort, or inability to maintain weight.
- b. Amebic abscess residuals. Persistent abnormal liver function tests and failure to maintain weight and vigor after appropriate treatment.
- c. Biliary dyskinesia. Frequent abdominal pain not relieved by simple medication, or with periodic jaundice.
- d. Cirrhosis of the liver. Recurrent jaundice, ascites, or demonstrable esophageal varices or history of bleeding therefrom.
- e. Gastritis. Severe, chronic hypertrophic gastritis and repeated symptomatology and hospitalization, and confirmed by gastroscopic examination.
- f. Hepatitis, chronic. When, after a reasonable time (1 or 2 years) following the acute stage, symptoms persist, and there is objective evidence of impairment of liver function.
 - g. Hernia.
- (1) Hiatus hernia. Severe symptoms not relieved by dietary or medical therapy, or recur-

rent bleeding in spite of prescribed treatment.

- (2) Other. If operative repair is contraindicated for medical reasons or when not amenable to surgical repair.
 - h. Ileitis, regional.
- i. Pancreatitis, chronic. Frequent abdominal pain of a severe nature; steatorrhea or disturbance of glucose metabolism requiring hypoglycemic agents.
- j. Peritoneal adhesions. Recurring episodes of intestinal obstruction characterized by abdominal colicky pain, vomiting and intractable constipation requiring frequent admissions to the hospital.
- k. Proctitis, chronic. Moderate to severe symptoms of bleeding, painful defectaion, tenesmus, and diarrhea, and repeated admissions to the hospital.
- l. Ulcer, peptic, duodenal, or gastric. Repeated hospitalization or "sick in quarters" because of frequent recurrence of symptoms (pain, vomiting, or bleeding) in spite of good medical management, and supported by laboratory and X-ray evidence of activity.
- m. Ulcerative colitis. Except when responding well to treatment.

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1 December 1983

C 34, AR 40-501

j. Myelopathy, transverse.

k. Narcolepsy. When attacks are not controlled by medication.

- l. Paralysis agitans.
- m. Peripheral nerve conditions.
- (1) Neuralgia. When symptoms are severe, persistent, and not responsive to treatment.
- (2) Neuritis. When manifested by more than moderate, permanent functional impairment.
 - (3) Paralysis due to peripheral nerve inju-

ry. When manifested by more than moderate, permanent functional impairment.

n. Syringomyelia.

o. General. Any other neurological condition, regardless of etiology, when after adequate treatment, there remain residuals, such as persistent severe headaches, convulsions not controlled by medications, weakness or paralysis of important muscle groups, deformity, incoordination, pain or sensory disturbance, disturbance of consciousness, speech or mental defects, or personality changes of such a degree as to definitely interfere with the performance of duty.

*Section XV. MENTAL DISORDERS

F-8

Diagnostic concepts and terms utilized in this section are in consonance with the Diagnostic and Statistical Manual, Third Edition (DSM-III), American Psychiatric Association, 1980.

3-29. Disorders with Psychotic Features

Mental disorders not secondary to stress, intoxication, infectious, toxic or other organic causes with gross impairment in reality testing resulting in interference with duty or social adjustment.

3-30. Affective Disorders (Mood Disorders)

Persistence or recurrence of symptoms sufficient to require extended or recurrent hospitalization, necessity for limitations of duty or duty in protected environment or resulting in interference with effective military performance.

3-31. Anxiety, Somatoform, or Dissociative Disorders (Alternatively may be addressed as Neurotic Disorders)

Persistence or recurrence of symptoms sufficient to require extended or recurrent hospitalization, necessity for limitations of duty or duty in protected environment or resulting in interference with effective military performance.

3-32. Organic Mental Disorders

Persistence of symptoms or associated personal-

ity change sufficient to interfere definitively with the performance of duty or social adjustment.

3-32.1. Personality, Psychosexual or Factitious Disorders; Disorders of Impulse Control Not Elsewhere Classified; Substance Use Disorders

These conditions may render an individual administratively unfit rather than unfit because of physical disability. Interference with performance of effective duty in association with these conditions will be dealt with through appropriate administrative channels.

3-32.2. Adjustment Disorders

Transient, situational maladjustments due to acute or special stress do not render an individual unfit because of physical disability, but may be the basis for administrative separation if recurrent and cause interference with military duty.

3-32.3. Disorders Usually First Evident in Infancy, Childhood or Adolescence

These disorders, to include primary mental deficiency or special learning defects, or developmental disorders do not render an individual unfit because of physical disability but may result in administrative unfitness if the individual does not show satisfactory performance of duty.

1 December 1983 C 34, AR 40-501

are in effect) will be processed as prescribed in AR 140-120 for members of the Army Reserve, or NGR 635-200, NGR 40-501, or NGR 40-3 for members of the Army National Guard of the United States, for disability separation or continuance in their Reserve status as prescribed in the cited regulations. Members of the Army National Guard and Army Reserve who may be unfit because of a disability resulting from injury incurred during a period of active duty training of 30 days or less, or active duty for training for 45 days ordered because of unsatisfactory performance of training duty, or inactive duty training will be processed as prescribed in AR 40-3 and AR 635-40:

d. Members on extended active duty who meet retention medical fitness standards, but may be administratively unfit or unsuitable will be reported to the appropriate commander for processing as provided in other regulations, such as AR 635-200.

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- e. Gastritis. Severe, chronic hypertrophic gastritis and repeated symptomatology and hospitalization; and confirmed by gastroscopic examination.
- f. Hepatitis, chronic. When, after a reasonable time (1 or 2 years) following the acute stage, symptoms persist, and there is objective evidence of impairment of liver function.
 - g. Hernia.
- Hiatus hernia. Severe symptoms not relieved by dietary or medical therapy, or recur-

rent bleeding in spite of prescribed treatment.

- (2) Other. If operative repair is contraindicated for medical reasons or when not amenable to surgical repair.
 - h. Ileitis, regional.
- i. Pancreatitis, chronic. Frequent abdominal pain of a severe nature; steatorrhea or disturbance of glucose metabolism requiring hypoglycemic agents.
- j. Peritoneal adhesions: Recurring episodes of intestinal obstruction characterized by abdominal colicky pain, vomiting and intractable constipation requiring frequent admissions to the hospital.
- k Proctitis, chronic Moderate to severe symptoms of bleeding, painful defectation, tenesmus, and diarrhea, and repeated admissions to the hospital.
- (1 Ulcer, peptic, duodenal, or gastric. Repeated hospitalization or "sick in quarters" because of frequent recurrence of symptoms (pain, vomiting, or bleeding) in spite of good medical management, and supported by laboratory and X-ray evidence of activity.
- m. Ulcerative colitis: Except when responding well to treatment

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EXHIBIT



DEPARTMENT OF VETERANS AFFAIRS REGIONAL OFFICE AND INSURANCE CENTER P O BOX 8079 PHILADELPHIA PA 19101

Joseph D. Reaves

VA File Number 164 58 3092

Represented by: DISABLED AMERICAN VETERANS

Decision Review Officer Decision February 29, 2012

INTRODUCTION

The records reflect that you are a veteran of the Peacetime. You served in the Army from October 6, 1981 to October 5, 1984 and from October 6, 1984 to November 10, 1986. We received your Substantive Appeal on May 22, 2008. Based on a review of the evidence listed below, we have made the following decision on your appeal.

DECISION

Service connection for chronic gastritis with peptic ulcer disease (claimed as gastrointestinal disorder) is granted with an evaluation of 10 percent effective September 14, 2000.

EVIDENCE

- VA Form 21-526, Application for Compensation and/or Pension received September 14, 2000
- Service treatment records for the period October 8, 1981, through October 5, 1984

- VA letter dated December 12, 2008
- Progress Notes, SCI Graterford, dated November 15, 1990, through February 20, 2008
- VA examination conducted at SCI Graterford on March 8, 2009
- Statements from you that pertain to gastrointestinal disorder dated June 1, 2008; September 9, 2008; January 2, 2009; April 21, 2009; June 28, 2009

REASONS FOR DECISION

Service connection for chronic gastritis with peptic ulcer disease (claimed as gastrointestinal disorder).

In regards to your appeal, we are granting service connection for chronic gastritis with peptic ulcer disease based on evidence showing the condition developed during your first period of military service that was deemed honorable for the purposes of VA benefits.

We have assigned a 10 percent evaluation following a review of all medical evidence dating back to 1990. An evaluation of 10 percent is assigned if there are small nodular lesions and symptoms.

Service treatment records indicate that you were treated for an ulcer during your first period of service.

Treatment records from SCI Graterford beginning in November, 1990, note various complaints of epigastric distress treated with Tagament.

At your VA examination conducted on March 8, 2009, you reported in service treatment for an ulcer in 1983. You continued to have symptoms thereafter and were treated in 1994 at the prison infirmary for severe gastritis. You report that approximately three to four times per year you will have an exacerbation of the epigastric distress that could last up to two weeks. You follow a bland diet and have been prescribed Tagament and a form of antacid that proves to be effective in relieving the distress. Physical examination found you to be in no acute distress with a healthy appearance. The abdomen revealed mid epigastric tenderness without rebound. There was no organmegaly and bowel sounds were normal. Diagnosis provided is peptic ulcer disease and chronic gastritis that are opined to be related to the treatment in service for an ulcer.

The medical evidence does not demonstrate multiple small eroded or ulcerated areas with associated symptoms to assign a higher evaluation.

The effective date of the grant of service connection is September 14, 2000, the date the claim was received within the Department of Veterans Affairs since it has been continuously prosecuted since that date.

F-2

-	Decision Review Officer Decision		d Veterans Affairs OFFICE AND CCENTER	iled 01	1/24/13 Page 58	of 68 Page 1 02/29/2012
- 1	name of veteran Joseph D. Reaves	VA FILE NUMBER 164 58 3092	SOCIAL SECURITY NR 164-58-3092	DISA	BLED AMERICAN VETERANS	СОРУ ТО

		ACTIVE DUTY	Y
EOD	RAD	BRANCH	CHARACTER OF DISCHARGE
10/06/1981			Honorable for VA Purposes
10/06/1984	11/10/1986	Army	Dishonorable for VA Purposes

		LEGACY C	ODES
ADD'L SVC. CODE	COMBAT CODE	SPECIAL PROV CDE	FUTURE EXAM DATE
	1		None

JURISDICTION: Substantive Appeal Received 05/22/2008

ASSOCIATED CLAIM(s): 174; DRO Decision; 02/29/12

SUBJECT TO COMPENSATION (1. SC)

7307

CHRONIC GASTRITIS WITH PEPTIC ULCER DISEASE (CLAIMED AS

GASTROINTESTINAL DISORDER) Service Connected, Peacetime, Incurred

Static Disability 10% from 09/14/2000

COMBINED EVALUATION FOR COMPENSATION:

10% from 09/14/2000

NOT SERVICE CONNECTED/NOT SUBJECT TO COMPENSATION (8.NSC Peacetime)

5010-5257

TRAUMATIC CHONDROMALACIA, RIGHT KNEE/LEG

Not Service Connected, Not Incurred/Caused by Service

5299-5294

CHRONIC REFRACTORY SACROILIITIS BILATERALLY (CLAIMED

BUTTOCK AND BACK CONDITIONS)

Not Service Connected, Not Incurred/Caused by Service

6100

BILATERAL HEARING LOSS

Not Service Connected, Not Incurred/Caused by Service

43

Case 1:16-ev	00141 ZNS		Filed 01/29	//16 Page 59			
Decision Review Officer Decision		f Veterans Affairs OFFICE AND CCENTER			Page 2 02/29/2012		
NAME OF VETERAN Joseph D. Reaves	VA FILE NUMBER 164 58 3092	SOCIAL SECURITY NR 164-58-3092	DISABLE	POA D AMERICAN VETERANS	COPY TO		
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7399-7312	ANY LIVER CONDITION Not Service Connected, Not Incurred/Caused by Service						
7813	LEFT FOOT FUNGUS Not Service Connected, Not Incurred/Caused by Service						
7813	FUNGUS OF THE HANDS AND FINGERS Not Service Connected, Not Incurred/Caused by Service						
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9499-9413

ANY MENTAL DISORDER (CLAIMED AS DEPRESSION AND ANXIETY) Not Service Connected, Not Incurred/Caused by Service

Decision Review Officer Decision		of veterans Affairs OFFICE AND	iled 01	/29/ (16) Page 60	of 68 Page 3 02/29/2012
Joseph D. Reaves	VA FILE NUMBER 164 58 3092	SOCIAL SECURITY NR 164-58-3092	DISA	POA BLED AMERICAN VETERANS	COPY TO
LD DRO	4)				

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	REPORT OF MEDICAL HISTORY (THIS INFORMATION IS FOR OFFICIAL AND MEDICALLY-CONFIDENTIAL USE ONLY AND WILL NOT BE RELEASED TO UNAUTHORIZED PERSONS)											
1.			FIRST NAME-MIDDLE NAME								IFICATION NO.	
	KE	AUE	iš Joseph Dax	RE	N		164	1-58-3092				
3. (3. HOME ADDRESS (No. street or RFD, city or town, State, and ZIP CODE) 1940 900 Th 56 5treet Philadel phia, Pennsylvania 19143 4. POSITION (Title, grade, component)											
5. i	5. PURPOSE OF EXAMINATION 6. DATE OF EXAMINATION 7. EXAMINING FACILITY OR EXAMINER, AND ADDRESS (Include ZIP Code) USAHC											
	(Include ZIP Code) USANC											
	NOO'S AUGSBURG											
8.	B. STATEMENT OF EXAMINET'S PRESENT HEALTH AND MEDICATIONS CURRENTLY USED (Follow by description of past history, if complaint exists)											
	B. STATEMENT OF EXAMINET'S PRESENT HEALTH AND MEDICATIONS CURRENTLY USED (Follow by description of past history, it complaint exists) The Am in very good Health and At this Time I'm not on any medication:											
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YES	NO	_	(Ch	eck e	ach	tem)		YES	NO		(Check each item)	
	V	Lived v	with anyone who had tuberculosis						V	Wear	glasses or contact lenses	
	W	Cough	ed up blood					V		Have	vision in both eyes	
	V	Bled e	xcessively after injury or tooth ext	ractio	on				-	Wear	a hearing aid	
	V	Attemp	oted sulcide						4	Statte	r or stammer habitually	
	V	Been a	sleepwalker						-	Wear a	brace or back support	
11. 1	HAVE	YOU E	VER HAD OR HAVE YOU NOW (Plea	ese ci	heck	et left of	each item)					
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TES	NO	KNOW	Scarlet fever, erysipelas	7 EG	1/	7	Cramps in your legs	120	-110	/	"Trick" or locked knee	
-	·	_	Rheumatic fever	_	1		Frequent Indigestion	-	v	/	Foot trouble	
	V	/	Swollen or painful joints	V			Stomach, liver, or intestinal trouble		10		Neuritis	
	1		Frequent or severe headache/3	V			Gall bladder trouble or gallstones	_	W		Paralysis (include infantile)	
	V	-	Dizziness or fainting spells		V		Jaundice or hepatitis		V		Epilepsy or fits	
	سا		Eve trouble		سمنا		Adverse reaction to serum, drug.		4		Car, train, sea or air sickness	
V		-	Ear, nose, or throat trouble		1		or medicine		4		Frequent trouble sleeping	
	V		Hearing loss		~		Broken bones	00			Depression or excessive worry	
	V		Chronic or frequent colds		0		Tumor, growth, cyst, cancer		W		Loss of memory or amnesia	
-	V	_	Severe tooth or gum trouble		V		Rupture/hernia		i		Nervous trouble of any sort	
	-		Sinusitis		V		Piles or rectal disease		-2-		Periods of unconsciousness	
Po-	V		Hay Fever		i		Frequent or painful urination					
	V		Head Injury		V		Bed wetting since age 12			in-ii		
	V		Skin diseases		W		Kidney stone or blood in urine					
	V		Thyroid trouble		0		Sugar or albumin in urine					
	0		Tuberculosis		0		VD-Syphilis, gonorrhea, etc.					
_	0		Asthma		V		Recent gain or loss of weight					
_	V		Shortness of breath		~		Arthritis, Rheumatism, or Bursitis					
	V	/	Pain or pressure in chest		V		Bone, joint or other deformity					
	Chronic cough Lameness											
	/ Palpitation or pounding heart Loss of finger or toe 12. FEMALES ONLY: HAVE YOU EVER											
	U		Heart trouble		V	/	Painful or "trick" shoulder or elbow				Been treated for a female disorder	
	V		High or low blood pressure		W		Recurrent back pain				Had a change in menstrual pattern	
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13. \	MHAT	IS YOU	IR USUAL OCCUPATION?					14.	ARE	YOU (C	heck one)	
13510						Right handed Left handed						

	_	Case 1:16-cv-00141-ZNS	S Document 1 Filed 01/29/16 Page 62 of 68
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	V	B. Inability to perform certain motion	
	ı	C. Inability to assume certain position	
	L	D. Other medical reasons (If yes, greasons.)	
	V	16. Have you ever been treated for a men condition? (If yes, specify when, whe and give details).	re,
	L	27. Have you ever been denied life inst ance? (if yes, state reason and gi details.)	
	t	18. Have you had, or have you been advis to have, any operations? (If yes, descriand give age at which occurred.)	MAY 83 At Flak hospital
1		 Have you ever been a patient in any typ of hospitals? (If yes, specify when, wher why, and name of doctor and comple address of hospital.) 	3 MAY 83 Until 5 MAY 83 At Flak hospital Flak kassene for An view the doctor Whene is M.D. Thomas Col. I me Chinic
	L	 Have you ever had any illness or injury other than those already noted? (If yespecify when, where, and give details 	5
V		 Have you consulted or been treated be clinics, physicians, healers, or othe practitioners within the past 5 years for other than minor illnesses? (If yes, given plate address of doctor, hospita clinic, and details.) 	
		22. Have you ever been rejected for militar service because of physical, mental, o other reasons? (If yes, give date and reason for rejection.)	
-		23. Mave you ever been discharged from military service because of physical mental, or other reasons? (If yes, give date, reason, and type of discharge whether honorable, other than honorable for unfitness or unsuitability.)	
1	1	24 Have you ever received, is there pending or have you applied for pension or compensation for existing disability? (If yes, specify what kind, granted by whom, and what amount, when, why.)	
certify authorized	y the	nat I have reviewed the foregoing information	supplied by me and that it is true and complete to the best of my knowledge.
		PRINTED NAME OF EXAMINEE	SIGNATURE
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NOTE: 1	HAN	D TO THE DOCTOR OR NURSE, OR IF MAIL	
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Standard Form 600
General Services Administration and
Interagency Committee on Medical Records
FPMR 101-11.806-8
October 1975
Luception Approved by NARS
1 Aug 79

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Case 1:16-cv-00141-ZNS Document 1 Filed 01/29/16 Page 64 of 68

Standard Form 600

General Services Administration and
Interagency Committee on Medical Records
FPMR 101-11.806-8

October 1975

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1 Aug 79

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HEALTH RECORD		CHRONOLOGICAL RECORD OF MEDICAL CARE						
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Case de de Control de 41 An an 40 Component agen	LALINE PAGE 6	8 of 68
DISCHARGE INSTRUCTIONS (TEACHING DECORD)		OTSG APPROVED (Date)
1. You will be discharged from the hospital on		are to return to
the Med Clinic on as needed	Follow-up appo	intment
2. DIAGNOSES/LAYPERSON'S TERMS;		
Pre-pyloric ulcer open aira		
point of the stimuch		***************************************
TREATMENT AND PROCEDURES: The following treatmen during your hospitalization:	t(s) and procedures	were conducted
Objectory		
3. MEDICATIONS: The medications that you will t	ake home are:	
Name of Drug	54	Instructions
layanet 300 mg 4 + m	es a day	
Mylanta I ha. Vancl. 3 he	alter has	, lr
and at bedtine		
4. SPECIFIC INSTRUCTIONS: (Activity/Limitations work, etc.)	7	tments, Lab, Socia
experience stomarh p	ain imeaturs	
2) Repeat ENDOJIOPY in 8 which		
2) Hopeat ENDOSTOPY 8 whs		
5. If you need assistance with your arrangements Health Nurse follow-up) for discharge, please writ	(equipment, transpose what you need:	ortation, Communit
DISCHARGE PLANS HAVE BEEN EXPLAINED.		
× Janel 1.		
SIGNATURE OF PATIENT	* * * * * * * * * * * * * * * * * * *	
opies (3): Clinical Record (Inpatient), Outpatien	t Treatment Record	(Health Record),
REPARED BY (Signature & Title) 2 (DEPARTMEN	T/SERVICE/CLINIC	(Continue on reverse)
John Kull MN Dept of N	ursing, Ft Riley, K	
TIENT'S DENTIFICATION (For typed or written entries give: Name - last, first, iddle; grade date; hospital or medical facility) 596361 20 16458 30 92	☐ HISTORY/PHYSICAL	☐ FLOW CHART
REAVES JOSEPH D PFC AAAA	OTHER EXAMINATION	N OTHER (Specify)
IRWIN ACH FT RILEY KS 5A DOB 621217 4 AUG86 AAXB	☐ DIAGNOSTIC STUDIES	
	☐ TREATMENT	2
A FORM ATOO	1,000	